

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File No.: EB-10-SE-053
)	
PreSonus Audio Electronics, Inc.)	NAL/Acct. No.: 201132100028
)	
)	FRN No.: 0020540134
)	

ORDER

Adopted: April 28, 2011

Released: April 28, 2011

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and PreSonus Audio Electronics, Inc. (“PreSonus”). The Consent Decree terminates an investigation initiated by the Bureau regarding PreSonus’s compliance with section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and sections 2.803, 2.1203, 15.19, and 15.105 of the Commission’s rules² (“Rules”) pertaining to the marketing of unauthorized Class B digital audio radio frequency devices.

2. The Bureau and PreSonus have negotiated the terms of the Consent Decree that would resolve this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether PreSonus possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act,³ and sections 0.111 and 0.311 of the Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803, 2.1203, 15.19, 15.105.

³ 47 U.S.C. § 154(i).

⁴ 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to counsel for PreSonus Audio Electronics, Inc., Tony Lin, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, N.W., Washington, D.C. 20037-1122, and to Stephen Fraser, Chief Operations Officer, PreSonus Audio Electronics, Inc., 7257 Florida Blvd., Baton Rouge, LA 70806.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and PreSonus Audio Electronics, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into possible violations of section 302(b) of the Communications Act of 1934, as amended,¹ and sections 2.803, 2.1203, 15.19, and 15.105 of the Commission's rules² pertaining to the marketing of unauthorized Class B digital audio radio frequency ("RF") devices.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. §151 *et seq.*
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) "Communications Laws" means the Act, the Rules and the published and promulgated orders and decisions of the Commission.
 - (f) "Compliance Plan" means the compliance obligations and compliance program described in this Consent Decree at paragraph 8 hereof.
 - (g) "Effective Date" means the date on which the Bureau releases the Adopting Order.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803, 2.1203, 15.19, and 15.105.

- (h) “Investigation” means the investigation commenced by the Bureau’s July 12, 2010 letter of inquiry³ pertaining to possible violations by PreSonus of section 302(b) of the Act and sections 2.803, 2.1203, 15.19, and 15.105 of the Rules by marketing unauthorized Class B digital audio RF devices within the United States.
- (i) “Parties” means PreSonus and the Bureau, each of which is a “Party”.
- (j) “PreSonus” means PreSonus Audio Electronics, Inc., its predecessors-in-interest and successors-in-interest.
- (k) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Under section 302(b) of the Act and section 2.803(a) of the Rules,⁴ the Commission prohibits the marketing⁵ of RF devices⁶ in the United States unless the devices comply with the applicable administrative, technical, labeling and identification requirements of the Rules. Under section 15.101(a) of the Rules,⁷ parties responsible⁸ for unintentional radiators,⁹ such as the Class B digital audio RF devices¹⁰ marketed by PreSonus, must, in general, authorize the devices through the verification¹¹ or declaration of conformity¹² procedures. To be authorized, these devices must comply with the radiated emission limits specified in section 15.107 of the Rules,¹³ and – because these devices are designed to be connected to the public utility (AC) power line – the conducted limits specified in section 15.109 of the Rules.¹⁴ In addition, these devices must comply with certain labeling requirements under section 15.19 of

³ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Rick Naqvi, Vice President, Sales and Marketing, PreSonus Audio Electronics, Inc. (July 12, 2010) (“LOI”).

⁴ 47 C.F.R. § 2.803(a).

⁵ Section 2.803(e)(4) of the Rules defines “marketing” as including the “sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease.” 47 C.F.R. § 2.803(e)(4).

⁶ Section 2.801 of the Rules defines “radio frequency device” as “any device which in its operation is capable of emitting radio-frequency energy by radiation, conduction, or other means.” 47 C.F.R. § 2.801.

⁷ 47 C.F.R. § 15.101(a).

⁸ See 47 C.F.R. § 2.909(b), (c).

⁹ Section 15.3(z) of the Rules defines “unintentional radiator” as “a device that intentionally generates radio frequency energy for use within the device, or that sends radio frequency signals by conduction to associated equipment via connecting wiring, but which is not intended to emit RF energy by radiation or induction.” 47 C.F.R. § 15.3(z).

¹⁰ Section 15.3(i) of the Rules defines “Class B digital device” as “a digital device that is marketed for use in a residential environment notwithstanding use in commercial, business and industrial environments.” 47 C.F.R. § 15.3(i).

¹¹ See 47 C.F.R. § 2.902.

¹² See 47 C.F.R. § 2.906.

¹³ 47 C.F.R. § 15.107.

¹⁴ 47 C.F.R. § 15.109.

the Rules.¹⁵ Under section 15.105 of the Rules,¹⁶ the manual for these devices must include a specified statement regarding interference. Under section 2.1203 of the Rules,¹⁷ an importer of these devices must declare the conditions under which they are admissible into the United States.

3. On July 12, 2010, the Bureau issued the LOI to PreSonus.¹⁸ The LOI directed PreSonus to respond to a series of questions regarding its apparent marketing of certain digital audio devices. PreSonus responded to the LOI on September 10, 2010.¹⁹ PreSonus and the Bureau entered into a Tolling Agreement on October 19, 2010.²⁰

III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

5. **Jurisdiction.** PreSonus agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of said Investigation, PreSonus agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against PreSonus concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in this Investigation through the Effective Date, or

¹⁵ 47 C.F.R. § 15.19.

¹⁶ 47 C.F.R. § 15.105.

¹⁷ 47 C.F.R. § 2.1203; *see also* 47 C.F.R. §§ 2.1204, 2.1205.

¹⁸ *See* LOI, *supra* note 3.

¹⁹ *See* Letter from Clifford M. Harrington and Tony Lin, Counsel for PreSonus Audio Electronics, Inc. to Nissa Laughner, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (September 10, 2010).

²⁰ Tolling Agreement, File No. EB-10-SE-053, executed by and between Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and Jim Mack, Chief Executive Officer, PreSonus Audio Electronics, Inc. (October 19, 2010). The Parties entered into a Tolling Agreement Extension on March 8, 2011. Tolling Agreement Extension, File No. EB-10-SE-053, executed by and between Ricardo M. Durham, Acting Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and Stephen Fraser, Chief Operations Officer, PreSonus Audio Electronics, Inc. (March 8, 2011). The Parties entered into a second Tolling Agreement Extension on April 11, 2011. Tolling Agreement Extension, File No. EB-10-SE-053, executed by and between John D. Poutasse, Acting Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and Stephen Fraser, Chief Operations Officer, PreSonus Audio Electronics, Inc. (April 11, 2011).

the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against PreSonus with respect to PreSonus's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, PreSonus agrees that within sixty (60) calendar days after the Effective Date it shall (i) implement a Compliance Plan relating to future compliance with the Communications Laws, including section 302(b) of the Act, sections 2.803, 2.1203, 15.19, and 15.105 of the Rules, and other Rules, Commission orders or statutory requirements governing the authorization and marketing of RF devices; (ii) establish and maintain standard, internal operating procedures and policies that PreSonus shall follow to ensure compliance with such requirements ("Operating Procedures"); and (iii) incorporate such Operating Procedures in its Compliance Manual pursuant to paragraph 8(b) below. The Compliance Plan shall include, at a minimum, the following components:

- (a) **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, PreSonus shall designate a senior corporate manager to serve as a Compliance Officer. The Compliance Officer shall be responsible for administering the Compliance Plan and shall be familiar with the FCC's Rules relating to the authorization and marketing of RF devices, including all applicable technical and administrative requirements.
- (b) **Compliance Manual.** The Compliance Officer shall develop and distribute a Compliance Manual to all employees of PreSonus and others who perform duties on its behalf that trigger or may trigger compliance-related responsibilities under section 302(b) of the Act, sections 2.803, 2.1203, 15.19, or 15.105 of the Rules, and any other Rules, Commission orders or statutory requirements governing the authorization and marketing of RF devices (each a "Covered Employee"). The Compliance Manual shall describe (i) the Commission's equipment authorization and marketing requirements; and (ii) the Operating Procedures that PreSonus will follow to ensure compliance with such requirements. PreSonus shall periodically review and, to the extent necessary, revise the Compliance Manual to ensure that it remains current and complete. PreSonus shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training.** Within sixty (60) calendar days after the Effective Date, PreSonus shall establish and implement a training program on compliance with section 302(b) of the Act, sections 2.803, 2.1203, 15.19, and 15.105 of the Rules, and other Rules, Commission orders or statutory requirements governing the authorization and marketing of RF devices ("Training Program"). The Training Program will be provided to all Covered Employees. Any person who becomes a Covered Employee at any time after the initial Training Program session shall be provided such training within thirty (30) calendar days after the date such person becomes a Covered Employee. PreSonus shall conduct the Training Program on an annual basis, and shall periodically review and, to the extent necessary, revise the Training Program to ensure that it remains current and complete, and to enhance its effectiveness.

- (d) **Reporting Non-Compliance.** PreSonus shall report any non-compliance with section 302(b) of the Act, or sections 2.803, 2.1203, 15.19, or 15.105 of the Rules, to the Bureau within fifteen (15) calendar days after the discovery of such non-compliance. Such reports shall include a detailed explanation of (i) each instance of non-compliance; (ii) the steps that PreSonus has taken or will take to remedy such non-compliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that PreSonus has taken or will take to prevent the recurrence of any such non-compliance. All such reports of non-compliance shall be submitted to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Nissa.Laughner@fcc.gov and to Neal.McNeil@fcc.gov.
- (e) **Compliance Reports.** PreSonus shall file Compliance Reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date and twenty-four (24) months after the Effective Date.
- (i) Each compliance report shall provide a detailed description of PreSonus' efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Commission's requirements relating to the authorization and marketing of RF devices. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of PreSonus, stating that the Compliance Officer has personal knowledge that PreSonus (A) has established and implemented the Compliance Plan; (B) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (C) is not aware of any instances of non-compliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 8(d) hereof.
- (ii) The certification shall be accompanied by a statement explaining the basis for the Compliance Officer's certification and must comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.
- (iii) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of PreSonus, shall provide the Commission with a detailed explanation of (A) each instance of non-compliance; (B) the steps that PreSonus has taken or will take to remedy such non-compliance, including the schedule on which proposed remedial actions will be taken; and (C) the steps that PreSonus has taken or will take to prevent the recurrence of any such non-compliance, including the schedule on which such preventive action will be taken.
- (iv) All Compliance Reports shall be submitted to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Nissa.Laughner@fcc.gov and to Neal.McNeil@fcc.gov.

- (f) **Termination Date.** Unless stated otherwise, the requirements of this paragraph 8 of the Consent Decree shall expire twenty-four (24) months after the Effective Date.

9. **Voluntary Contribution.** PreSonus agrees that it will make a voluntary contribution to the United States Treasury in the amount of one hundred twenty five thousand dollars (\$125,000). The payment must be made within thirty (30) calendar days after the Effective Date. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). PreSonus must also send electronic notification to Nissa.Laughner@fcc.gov and to Neal.McNeil@fcc.gov on the date said payment is made.

10. **Waivers.** PreSonus waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order adopting the Consent Decree without change, addition, modification, or deletion. PreSonus shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither PreSonus nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and PreSonus shall waive any statutory right to a trial *de novo*. PreSonus hereby agrees to waive any claims it may have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

11. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

12. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which PreSonus does not expressly consent) that provision will be superseded by such Rule or order.

13. **Successors and Assigns.** PreSonus agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

14. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the matters set forth herein. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act, the Rules or the Commission’s orders.

15. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

16. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

17. **Authorized Representative.** The individual signing this Consent Decree on behalf of PreSonus represents and warrants that he is authorized by PreSonus to execute this Consent Decree and to bind this company to the obligations set forth herein. The FCC signatory represents that she is signing this agreement in her official capacity and that she is authorized to execute this Consent Decree.

18. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief, Enforcement Bureau

Date

Stephen Fraser
Chief Operations Officer
PreSonus Audio Electronics, Inc.

Date